



OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Tom A. Craven
County Auditor
McLennan County
Waco, Texas

Dear Sir:

Opinion No. 0-1148

Re: Would the commissioners' court have the authority to contract for the collection of delinquent costs, such contracting collector to be compensated for his services on a commission basis, such commissions to be retained by the collector out of the funds collected?

Your request for an opinion on the question, as is herein stated, has been received by this office.

Your letter reads, in part, as follows:

"McLennan County has a rather large sum of unpaid costs earned in connection with the operation of the various county officers. A large percent of these costs were earned by officials who are no longer holding county offices and very little effort is being made to collect these delinquencies. Would the commissioners' court of the county have the authority to contract for the collection of delinquent costs, such contracting collector to be compensated for his services on a commission basis, such commissions to be retained by the collector out of the funds collected?"

Section 5 of Article 3912e reads as follows:

"It shall be the duty of all officers to charge and collect in the manner authorized by law all fees and commissions which are permitted by law to be assessed and collected for all official service performed by them. As and when such fees are collected they shall be deposited in the Officers' Salary Fund, or funds provided in this Act. In event the Commissioners' Court finds that the failure to collect any fee or commission was due to neglect on the part of the officer charged with the responsibility of collecting same, the amount of such fee or commission shall be deducted from the salary of such officer. Before any such deduction is made, the Commissioners' Court shall furnish such officer with an itemized statement of the uncollected fees with which his account is to be charged, and shall notify such officer of the time and place for a hearing on same, to determine whether such officer was guilty of negligence, which time for hearing shall be at least ten days subsequent to the date of notice. Unless an officer is charged by law with the responsibility of collecting fees, the Commissioners' Court shall not in any event make any deductions from the authorized salary of such officer."

Articles 2051, 2052 and 2053, Revised Civil Statutes, read as follows:

"Article 2051.- Each party to a suit shall be liable to the officers of the court for all costs incurred by himself. No sheriff or constable shall be compelled to execute any process in civil cases coming from any county other than the one in which he is an officer, unless the fees allowed him by law for the service of such process shall be paid in advance; except when affidavit is filed, as provided by law. The clerk issuing the process shall indorse thereon the words, 'pauper oath filed', and sign his name

officially below them; and the officer in whose hands such process is placed for service shall serve the same."

"Article 2052.- Each party to a suit shall be liable for all costs incurred by him. If the costs cannot be collected from the party against whom they have been adjudged, execution may issue against any party in such suit for the amount of costs incurred by such party, but no more."

"Article 2053.- Officers may demand payment of all costs due in each and every case pending in their respective courts, up to the adjournment of each term of said courts."

Article 2054 and 2055, Revised Civil Statutes, provide as follows:

"Article 2054.- If any party responsible for costs fails or refuses to pay the same within ten days after demand for payment, the clerk or justice of the peace may make certified copy of the bill of costs then due, and place the same in the hands of the sheriff or constable for collection. All taxes imposed on law proceedings shall be included in the bill of costs. Such certified bill of costs shall have the force and effect of an execution. The removal of a case by appeal shall not prevent the issuance of an execution for costs at the end of the term."

"Article 2055.- The sheriff or constable upon demand and failure to pay said bill of costs, may levy upon a sufficient amount of property of the person from whom said costs are due to satisfy the same, and sell such property according to the law governing sales under execution. Where such party is not a resident of the county

where such suit is pending, the payment of such costs may be demanded of his attorney of record; and neither the clerk nor justice of the peace shall be allowed to charge any fee for making out such certified bill of costs, unless he is compelled to make a levy."

Article 2077, Revised Civil Statutes, reads as follows:

"When costs have been adjudged against a party and are not paid, the clerk or justice of the court in which the suit was determined may issue execution, accompanied by an itemized bill of costs, against such party to be levied and collected as in other cases; and said officer, on demand of any party to whom any such costs are due, shall issue execution for costs at once. This article shall not apply to executors, administrators or guardians in cases where costs are adjudged against the estate of a deceased person or of a ward. No execution shall issue in any case for costs until after judgment rendered thereafter by the court."

Article 2446, Revised Civil Statutes, provides:

"Such execution or other process shall conform to the requirements of writs. It shall describe the judgment and shall require the sheriff or constable of the proper county to execute the same, according to its terms, whether the same be to make a sum of money, or to deliver personal property, or to deliver possession of real estate, or to do some other thing; and, if for money, it shall state the rate of interest; and it shall also require the officer to make the costs which may have been adjudged against the defendant in execution, and the further costs of executing the writ. A certified copy of the costs, taxed against the defendant in execution according to the fee book up to the issu-

ance of the execution, shall be attached to the writ."

Articles 3770 and 3911, Revised Civil Statutes, read as follows:

"Article 3770. - After the adjournment of a district or county court, the clerk thereof shall tax the costs in every case in which a final judgment has been rendered, and issue execution to enforce such judgment and collect such costs."

"Article 3911.- Officers receiving any process to be executed shall not be entitled in any case to demand their fees for executing the same in advance of such execution, but their fees shall be taxed and collected as other costs in the case."

Articles 2067 and 2068, Revised Civil Statutes, read as follows:

"Article 2067. - The clerk may require from the plaintiff security for costs before issuing any process, but shall file the petition and enter the same on the docket."

"Article 2068.- The plaintiff may be ruled to give security for costs at any time Before final judgment, upon motion of the defendant or any officer of the court interested in the costs accruing in such suit, and, if such rule be entered against the plaintiff and he fail to comply therewith on or before the first day of the next term of the court, the suit shall be dismissed."

We quote from Tex. Jur., Vol. 11, p. 331:

"In various situations a party who is entitled to costs may maintain a separate action, distinct from the suit in which the judgment awarding costs is rendered. . . ."

Also see 39 A.L.R. 1218.

Chapter 4, Title 15, of the Code of Criminal Procedure, prescribes the costs to be taxed against a defendant in a misdemeanor case. See *Overstreet vs. State*, 15 S.W. (2d) 1039.

Under the provisions of Article 1018 of the Code of Criminal Procedure all costs and fees paid by the State become a charge against the defendant, except in felony cases, where the punishment is assessed at death or life imprisonment. But a person who has been convicted of a felony may not be hired out or confined in jail in lieu of payment of costs, as in misdemeanor cases. Execution, as in civil cases, appears to be the only proper method for enforcing the payment of the costs in a felony case. The mere fact that the convict may not be confined to jail does not militate against any claim for costs enforceable against any property of the defendant legally liable therefor.

Also, see the cases of

Ex parte Smith, 8 S.W. (2d) 139
Ex parte Byrd, 13 S.W. (2d) 855

The above quoted and mentioned statutes specifically provide the manner in which costs shall be taxed and collected, and it is a well recognized principle of law that where the Legislature prescribes a definite and certain method of procedure for a city or county official to follow, other methods are by implication of law excluded. See *Foster vs. City of Waco*, 255 S.W. 1104.

Commissioners' Courts are courts of limited jurisdiction, in that their authority extends only to matters pertaining to the general welfare of their respective counties, and that their powers are only those expressly or impliedly conferred upon them by law; that is, by the constitution and statutes of the state.

Sun Vapor Elec. Light Co. vs. Keenan,
30 S.W. 868
Hill County vs. Hamilton, 273 S.W. 292
Temple Lbr. Co. vs. Commissioners'
Court of Sabine County, 239
S.W. 668
Garrett vs. Commissioners' Court, 230
S.W. 1010
Stratton vs. Commissioners' Court, 137
S.W. 1170
Ranken vs. McCallum, 60 S.W. 975

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In view of the foregoing authorities you are respectfully advised that it is the opinion of this department that the Commissioners' Court would not have the authority to contract for the collection of delinquent costs due the various county officers.

Trusting that we have satisfactorily answered your inquiry, we remain

Yours very truly

ATTORNEY GENERAL OF TEXAS

By ARDELL WILLIAMS (Sgd.)
Ardell Williams
Assistant

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APPROVED AUG. 26, 1939

GERALD C. MANN (Sgd.)

ATTORNEY GENERAL OF TEXAS

APPROVED
Opinion Committee
By B.W.B.
Chairman